

Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 AF-10 ARA-10 EA-07 EUR-12

NEA-10 OIC-02 FEA-01 ACDA-07 AGRE-00 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 EPG-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01

TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01

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FROM LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: INFORMAL PLENARY OF JUNE 24, 1977 ON ARTICLE 18 (OPTIONAL EXCEPTIONS), PART IV (COMPLUSORY DISPUTE SETTLEMENT)

SUMMARY

1. THE CHAIRMAN PROPOSED AMENDMENTS TO THE PROVISIO CLAUSE OF ARTICLE 18(1)(A); TO 18(1) (B) WHICH WOULD TREAT CERTAIN LAW ENFORCEMENT ACTIVITIES ON A PARITY WITH MILITARY ACTIVITIES BUT WOULD LIMIT THEM BY MAKING THEM SUBJECT TO THE EXCEPTIONS OF ARTICLE 17; AND TO 18(3), INCREASING ITS SCOPE SO AS TO ALLOW SUBMISSION OF A DISPUTE TO "ANY" SETTLEMENT PROCEDURES SPECIFIED IN THE ENTIRE CONVENTION. COMMENTS WERE MADE CONCERNING THE ACCEPTABILITY OF THE PROCEDURE IN THE PROVISIO TO (1)(A); THE INTERACTION OF (1)(B) WITH ARTICLE 17 AND THE NEED TO TREAT MILITARY AND LAW ENFORCEMENT ACTIVITIES ON A PARCTY, PARTICULARLY WITH REGARD TO ACTIVITIES IN THE ECONOMIC ZONE AND TERRITORIAL

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SEA; AND THE POSSIBILITY THAT COMPULSORY ADJUDICATION COULD BE EVADED BY THE SIMPLE DEVICE OF PLACING A MATTER ON THE AGENDA OF THE SECURITY COUNCIL IN ACCORDANCE WITH (1)(C). END SUMMARY

2. SPEAKERS INCLUDED THE USSR, HONDURAS, COLOMBIA, LIBYA, THE UK, YUGOSLAVIA, VENEZUELA, MADAGASCAR, THE FRG, MEXICO

AND BAHRAIN. THE PRESIDENT OPENED THE MEETING BY PROPOSING SEVERAL AMENDMENTS TO ARTICLE 18(1). CONCERNING THE PROVISIO TO ARTICLE 18(1)(A), HE PROPOSED TO DELETE ALL AFTER "SHALL" AND REPLACE IT BY "...WHEN SUCH A DISPUTE ARISES, INDICATE THAT WITH RESPECT TO SUCH DISPUTE IT ACCEPTS A REGIONAL OR OTHER THIRD PARTY PROCEDURE ENTAILING A BINDING DECISION, WHICH THE PARTY TO THAT DISPUTE HAS ALREADY ACCEPTED OR IS WILLING TO ACCEPT FOR THE PARTICULAR DISPUTE, FAILING WHICH ARTICLE 9 SHALL APPLY, AND PROVIDED FURTHER THAT SUCH PROCEDURE OR DECISION SHALL EXCLUDE THE DETERMINATION OF ANY CLAIM TO SOVEREIGNTY OR OTHER RIGHTS WITH RESPECT TO CONTINENTAL OR INSULAR LAND TERRITORY". WITH RESPECT TO ARTICLE 18(1)(B), HE PROPOSED DELETION OF THE PRESENT TEXT AND REPLACEMENT BY: "DISPUTES CONCERNING MILITARY ACTIVITIES, INCLUDING MILITARY ACTIVITIES BY GOVERNMENT VESSELS AND AIRCRAFT ENGAGED IN NON-COMMERICAL SERVICE AND LAW ENFORCEMENT ACTIVITIES IN THE EXERCISE OF SOVEREIGN RIGHTS, EXCLUSIVE RIGHTS OR EXCLUSIVE JURISDICTION RECOGNIZED BY THE PRESENT CONVENTION SUBJECT TO THE EXCEPTIONS IN ARTICLE 17." THE CHAIRMAN FURTHER PROPOSED THAT ARTICLE 18(3) BE MODIFIED BY REPLACING "A PROCEDURE" WITH "ANY PROCEDURE," AND "SPECIFIED IN SECTION II" WITH "SPECIFIED IN THE PRESENT CONVENTION". THE SOVIET UNION IN REJOINDER ASKED THAT THE AMENDMENTS NOT BE DISCUSSED IN DEPTH UNTIL THE NEXT SESSION IN ORDER TO GIVE DELEGATIONS ADEQUATE TIME IN WHICH TO STUDY LIMITED OFFICIAL USE

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THEM, TO WHICH THE CHAIRMAN AGREED.

3. ARTICLE 18(1)(A) -- HONDURAS, IN ATTEMPTING A RESOLUTION OF THE ACCEPTABILITY OF THE RESIDUARY FORUM IN THE PROVISIO CLAUSE, PROPOSED THAT (1)(A) COMMENCE WITH "WITHOUT PREJUDICE TO THE PROVISIONS OF ARTICLE 5 OF SECTION I OF THIS PART". THE CHAIRMAN AGREED TO CONSIDER THIS, AND SUGGESTED THAT THE CHAPEAU OF (1) MIGHT START WITH THE PHRASE "WITHOUT PREJUDICE TO THE OBLIGATIONS ARISING UNDER SECTION I". BAHRAIN INDICATED THAT GIVEN THE PROPOSED AMENDMENT TO THE PROVISIO CLAUSE IN (1)(A) IT SHOULD NOT BE POSSIBLE TO WITHDRAW A DECLARATION AT ANY TIME; AND PROPOSED THAT 18(3) BE AMENDED BY SUBSTITUTING FOR "AT ANY TIME WITHDRAW IT" THE PHRASE "WITHDRAW IT AT ANY TIME BEFORE ACCEPTANCE BY THE OTHER PARTY". THE UK REPRESENTATIVE, IN AGREEING WITH THE USSR'S INTERVENTION THE PREVIOUS DAY, THAT AGREEMENT IN FORUM UNDER THE PROVISIO CLAUSE BETWEEN STATES OF DIFFERENT POLITICAL AND SOCIAL SYSTEMS WOULD PROVE DIFFICULT, SUGGESTED THAT ARBITRATION CAN MORE EASILY TAKE INTO ACCOUNT OTHER FACTORS. HE INDICATED THAT HE HAD PREPARED AN AMENDMENT TO ARTICLE 9 (PROVIDING FOR RESIDUAL ARBITRATION IN CASE OF BOUNDARY DISPUTES),

WHICH COULD REPLACE 18(1)(A), BUT WOULD NOT INSIST ON ITS INTRODUCTION. THE FRG REPRESENTATIVE, ALTHOUGH INITIALLY STATING THAT HE PREFERRED NO EXCEPTIONS AT ALL, WENT ON TO SAY THAT HE COULD ACCEPT (1)(A) AND THE CHAIRMAN'S AMENDMENT RELATING TO MIXED LAND/SEA DISPUTES.

4. ARTICLE 18(1)(B) -- HONDURAS SUPPORTED THE RETENTION OF (1)(B) AS AMENDED, WHICH SAFEGUARDED THE BALANCE OF INTERESTS OF SMALL AND MAJOR POWERS. THE REPRESENTATIVE STATED HIS BELIEF THAT COMPULSORY DISPUTE SETTLEMENT WOULD NOT BE APPLICABLE TO THE TERRITORIAL SEA, BUT RESERVED HIS POSITION PENDING THE OUTCOME OF NEGOTIATIONS ON PART II. THE UK STATED ITS PREFERENCE FOR RETAINING (1)(B) IN ITS PRESENT FORM, "IF IT HAS TO BE HERE AT ALL." THE LIMITED OFFICIAL USE

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REPRESENTATIVE OF YUGOSLAVIA EXPRESSED STRONG PREFERENCE FOR DELETION OF (1)(B). HE OBJECTED IN PARTICULAR TO THE PHRASE "MILITARY ACTIVITIES" AS TOO VAGUE. HE STATED HIS BELIEF THAT AS "LAW ENFORCEMENT ACTIVITIES" IN (1)(B) CLEARLY REFERRED TO COASTAL STATE ACTIVITIES AND THAT AS THE LATTER WAS JUXTAPOSED IN (1)(B) TO "MILITARY ACTIVITIES" IT COULD LEAD TO THE SITUATION WHEREIN MILITARY ACTIVITIES BY A FOREIGN STATE WITHIN THE ECONOMIC ZONE OF ANOTHER WOULD BE EXEMPT FROM CDS, WHILE LAW ENFORCEMENT ACTIVITIES BY A COASTAL STATE IN THE ECONOMIC ZONE WOULD NOT. THE FRG PREFERRED REV. 2 OF (1)(B) TO THE PRESIDENT'S AMENDMENT, AS IT DID NOT UNDERSTAND THE RELATIONSHIP TO ARTICLE 17; AND CONSEQUENTLY RESERVED ITS POSITION. MADAGASCAR ASKED FOR DELETION OF (1)(B), PARTICULARLY INsofar AS IT WOULD APPLY TO THE ECONOMIC ZONE. IT WAS NOT CLEAR WHETHER THE PROVISION WAS LIMITED TO PEACEFUL MILITARY USES. THE REPRESENTATIVE OF BAHRAIN STATED THAT AS THE CONFERENCE IS CODIFYING INTERNATIONAL LAW, NOT POLITICAL PRACTICE, REFERENCE TO A MILITARY EXCEPTION SHOULD BE DELETED, NOTWITHSTANDING PRECEDENTS FOR SUCH CLAUSES IN TREATY PRACTICE AND IN DECLARATIONS UNDER ARTICLE 36 OF THE STATUTE OF THE ICJ. HE RECALLED HIS PREVIOUS REMARKS THAT ARTICLE 17 CONTAINS NO REFERENCE TO THE TERRITORIAL SEA; HE EXPRESSED THE VIEW THAT A STATE ENGAGING IN MILITARY ACTIVITIES IN ANOTHER STATE'S TERRITORIAL SEA THEREBY WAIVES ITS RIGHT TO INNOCENT PASSAGE. HE OBJECTED ALSO TO APPLICATION OF (1)(B) WITHIN THE ECONOMIC ZONE, AS A MILITARY ACTIVITY THERE MUST RESPECT THE RIGHTS OF THE COASTAL STATE; IF THERE IS A CONFLICT, THE COASTAL STATE SHOULD BE ABLE TO BRING IT TO A TRIBUNAL OR, IN CASE OF A THREAT TO THE PEACE, TO THE SECURITY COUNCIL. IF THE COUNCIL CONSIDERS THAT A LEGAL ISSUE IS INVOLVED, IT SHOULD BE ABLE TO REFER IT TO A TRIBUNAL UNDER ARTICLE 36(2) OF THE LIMITED OFFICIAL USE

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UN CHARTER.

5. THE UNITED KINGDOM PREFERRED THE ORIGINAL FORMULATION OF (1)(C) GIVEN THE COMPLEX PROCEDURE OF THE SECURITY COUNCIL AND THE INFREQUENCY OF REMOVING ITEMS FROM ITS AGENDA ONCE INSCRIBED. IT AGREED WITH FRANCE THAT (1)(C) SHOULD BE DELETED, AS "IT DOES NOT NEED SAYING, OR CANNOT BE SAID." THE FRG OBJECTED TO THE TERMINOLOGY "IF SEIZED" AS ANY STATE COULD ESCAPE ADJUDICATION BY REQUESTING THE SECURITY COUNCIL TO PLACE THE ISSUE ON ITS AGENDA.

6. THE CHAIRMAN ADJOURNED THE INFORMAL PLENARY UNTIL MONDAY, JUNE 27, 1977, WHEN THE PLENARY WOULD CONCLUDE ITS DISCUSSION OF ARTICLE 18 AND COMMENCE THAT OF ARTICLE 17.

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Message Attributes

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